

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

MILTON EVANS, JR., #R6364

PETITIONER

VERSUS

CIVIL ACTION NO. 5:06cv121DCB-MTP

WARDEN BYRD

RESPONDENT

ORDER

This matter comes before this court, sua sponte, for consideration of the transfer of this cause. The petitioner, an inmate currently incarcerated in the Delta Correctional Facility, Greenwood, Mississippi, filed this request for habeas corpus relief pursuant to 28 U.S.C. § 2254. Petitioner states that on August 13, 1998, he was convicted of manslaughter, murder and two counts of aggravated assault in the Circuit Court of Sharkey County, Mississippi.¹ Petitioner was sentenced to life plus 50 years in the custody of the Mississippi Department of Corrections.

The petitioner has previously filed for habeas relief in this court challenging the same conviction, Evans v. Byrd, 5:05cv172DCB-RHW (S.D. Miss. June 15, 2006). On June 15, 2006, this court entered a final judgment which dismissed the action with prejudice. The petitioner did not file a notice of appeal in that civil action.

¹The case was transferred to Leflore County, Mississippi, for trial. See Evans v. State, 797 So.2d 811, 813 (Miss. 2000).

A petitioner who is filing a second or successive motion for habeas relief must first apply to the appropriate court of appeals for an order authorizing the district court to consider the successive motion. 28 U.S.C. § 2244(b)(3)(A). In the case at bar, the petitioner has failed to submit any documentation demonstrating that he has obtained the required authorization from the United States Court of Appeals for the Fifth Circuit. Therefore, this court has determined that in the interest of justice, this cause should be transferred to the United States Court of Appeals for the Fifth Circuit for a determination whether this successive or second petition should be allowed. See In Re Epps, 127 F.3d 364 (5th Cir. 1997); 28 U.S.C. § 1631. Accordingly, it is hereby,

ORDERED that this petition for habeas corpus relief be, and the same hereby is, transferred to the United States Court of Appeals for the Fifth Circuit.

IT IS FURTHER ORDERED that the clerk of this court is directed to close this case pending the decision of the United States Court of Appeals for the Fifth Circuit.

SO ORDERED, this the 13th day of October, 2006.

S/DAVID BRAMLETTE
UNITED STATES DISTRICT JUDGE